

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

<b>Covad Communications Company</b>	:	
	:	
<b>Petition for Arbitration Pursuant to</b>	:	
<b>Section 252(b) of the</b>	:	
<b>Telecommunications Act of 1996</b>	:	
<b>to Establish an Amendment for</b>	:	
<b>Line Sharing to the</b>	:	<b>00-0312</b>
<b>Interconnection Agreement with</b>	:	
<b>Illinois Bell Telephone Company</b>	:	
<b>d/b/a Ameritech Illinois, and for an</b>	:	
<b>Expedited Arbitration Award on</b>	:	<b>Consol.</b>
<b>Certain Core Issues.</b>	:	
 <b>Rhythms Links, Inc.</b>		 <b>00-0313</b>
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**HEARING EXAMINER'S PROPOSED ARBITRATION DECISION**

July 24, 2000

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**I. JURISDICTION**

Section 252(b) of the Telecommunications Act of 1996 ("1996 Act") addresses the procedures for arbitration between incumbent local exchange carriers and other telecommunications carriers requesting interconnection. Section 252(b) prescribes the duties of the petitioning party, provides an opportunity to respond to the non-petitioning party, and sets out time limits. Section 252(b)(4) provides that the State Commission shall limit its consideration to the issues set forth in the petition and in the response; and shall resolve each such issues by imposing appropriate conditions on the parties as required to implement Subsection (c) (Standards for Arbitration). Subsection (d) sets out

pricing standards for interconnection and network element charges, transport and termination of traffic, and wholesale prices.

Under §252(c), a State Commission shall apply the following standards for arbitration:

(1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the Commission pursuant to Section 251;

(2) establish any rates for interconnection, services, or network elements according to subsection (d); and

(3) provide a schedule for implementation of the terms and conditions by the parties to the agreement.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

Covad Communications Company ("Covad") and Illinois Bell Telephone Company d/b/a Ameritech Illinois ("Ameritech") entered into an interconnection agreement effective on June 26, 1998. Similarly, Ameritech entered into an interconnection agreement with Rhythms Links, Inc. (f/k/a with Accelerated Connections, Inc.) ("Rhythms") on August 18, 1998. On November 18, 1999, both Covad and Rhythms sent letters to Ameritech requesting access to a new unbundled network element, the high frequency portion of the loop, pursuant to the FCC's *Line Sharing Order*. Both companies then embarked upon independent negotiations with Ameritech for amendments to their respective interconnection agreements. Those negotiations were ultimately unsuccessful.

On April 26, 2000, Covad filed a petition for arbitration. On the same day, Rhythms filed a similar petition for arbitration. Both petitions requested bifurcation of the arbitration into two phases. Covad and Rhythms requested that certain core issues be addressed on an expedited basis in Phase I in order to ensure that line sharing would be available on June 6, 2000 – the deadline established in the FCC's *Line Sharing Order*. Phase II would proceed pursuant to the normal arbitration time frame and provide permanent relief. On April 27, 2000, Covad and Rhythms filed a motion to consolidate the two pending arbitrations.

Pursuant to proper notice, a prehearing conference was held on May 4, 2000 before a duly authorized Hearing Examiner of the Commission at its offices in Springfield, Illinois. At that hearing, the motion to consolidate was granted. In addition the Hearing Examiner heard arguments regarding Covad's and

Rhythms' request for expedited Phase I relief and took the matter under advisement.

A second prehearing conference was held on May 9, 2000. At that hearing, the Hearing Examiner denied Covad and Rhythms request for a two phase arbitration. The petitioners then filed an interlocutory appeal on May 11, 2000 on this issue. The Commission denied the petitioners' request at an open meeting on June 1, 2000.

On May 15, 2000, Covad submitted the Verified Statements of Terry Moya and Michael Zulevic and Rhythms submitted the Verified Statements of Scott Bonney and Fred Baros. Covad and Rhythms jointly submitted the Verified Statements of Terry L Murray and Joseph P. Riolo. On May 25, 2000, Ameritech filed the Verified Statements of Betty Schlackman, Rhonda Meyer, James Smallwood, and Robin Jacobson. On June 16, 2000, Staff submitted the Verified Statements of Christopher L. Graves, Robert F. Koch, and Samuel McClerren.

On June 22, 2000, Covad presented the Supplemental Verified Statement of Michael Zulevic; Rhythms presented the Supplemental Verified Statement of Kerrin Beland; and Covad and Rhythms jointly submitted the Supplemental Verified Statement of Terry L. Murray. On the same date, Ameritech filed supplemental verified statements from Rhonda Meyer, Betty Schlackman, Robin Jacobson, and Dr. Michael A. Carnall.

Evidentiary hearings were held at the Commission's office in Springfield, Illinois on June 28 - 30, 2000 and July 6-7, 2000. Post Hearing briefs were filed by Covad and Rhythms, Ameritech, and Staff on July 13, 2000.

### **III. LEGAL AND REGULATORY BACKGROUND OF THE PROCEEDING**

The purpose of this proceeding is to establish terms and conditions under which ILECs must offer line sharing arrangements to Rhythms and Covad for the provision of xDSL-based service. In arriving at the decisions herein, four primary sources are discussed. The FCC Linesharing Order, the UNE Remand Order the decision of the Circuit Court of the District of Columbia in *GTE Services v. FCC* ("GTE") and the Eighth Circuit Court of Appeals Decision on remand in *Iowa Utilities Board v. FCC* ("IUB").

#### **A. FCC LINE SHARING ORDER**

The FCC's Line Sharing Order sets forth the obligations of ILECs such as SBC Ameritech to provide line sharing to competitive carriers. Under the terms of the Line Sharing Order, an ILEC must provide (1) unbundled access to the



high frequency portion of the loop so that carriers may use those frequencies to provide xDSL-based services; and (2) access to OSS necessary to support non-discriminatory pre-ordering, ordering, provisioning, maintenance and testing, and billing for CLECs. The FCC stated in the Line Sharing Order that its "fundamental goal is to promote 'innovation, investment and competition' in the advanced services marketplace." To this end the FCC stated: "We note that states are free to impose *additional, pro-competitive requirements* consistent with the national framework established in this order."

## **B. UNE REMAND ORDER**

The unbundling requirements set forth in the FCC's UNE Remand Order, pursuant to § 251 of the Act, were "designed to create incentives for both incumbent and competitive LECs to innovate and invest in technologies and services that will benefit consumers through increased choices of telecommunications services and lower prices." More specifically, the FCC sought to establish unbundling rules "to facilitate the rapid and efficient deployment of all telecommunications services, including advanced services."

Under the FCC's UNE Remand Order, ILECs are obligated to provide non-discriminatory access to UNEs and OSS. The FCC expressly stated in the Line Sharing Order that the ILEC obligation to provide access to OSS for xDSL-based services "falls squarely within an incumbent LEC's duty" under the Telecom Act. Access to OSS is critical to a CLEC's ability to compete with the ILECs. The FCC determined that "if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements in substantially the same time and manner as the incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing."

The UNE Remand Order requires that the "incumbent LEC must provide the requesting carrier with non-discriminatory access to the same detailed information about the loop that is available to the incumbent, so that the requesting carrier can make an independent judgment about whether the loop is capable of supporting the advanced services equipment the requesting carrier intends to install." To that end, the FCC held: ". . . the incumbent must provide access to the underlying loop qualification information contained in its engineering record, plant records and other back office systems so that requesting carriers can make their own judgments about whether those loops are suitable for the services the requesting carriers seek to offer.

Specifically, "under our existing rules, the relevant inquiry is not whether the retail arm of the incumbent has access to the underlying loop qualification information, but rather whether such information exists anywhere within the

incumbents' back office and can be accessed by any of the incumbent LEC's personnel." In addition, the FCC's UNE Remand Order requires that CLECs be permitted the same level of access to data as ILECs enjoy themselves. The UNE Remand Order states that "to the extent that [ILEC] employees have access to the information in an electronic format, that same format should be made available to new entrants via an electronic interface."

### **C. GTE**

In GTE, the Court reviewed the FCC's Collocation Order and concluded that certain portions requiring an ILEC to collocate equipment in areas designated by a requesting carrier, as opposed to areas selected by the ILEC were overly broad. The court also concluded that portions of the rule requiring the collocation of equipment with functionalities beyond those of establishing interconnection were overly broad.

### **D. IUB**

In IUB, the Court was required to again review various rules promulgated by the FCC in the First Report and Order following the passage of the Telecom Act of 1996. Pertinent to this matter are the following holdings: the pricing of network elements (which include line-shared loops) is to be done based upon an ILEC's existing infrastructure plus any technological improvements it may make in the future, rather than upon the most efficient and lowest cost technology available and; an ILEC is not required to combine unbundled elements in any technically feasible manner, rather, it is the duty of the requesting carrier to combine the unbundled elements purchased from the ILEC.

## **IV. ISSUES IDENTIFIED FOR ARBITRATION**

The issues to be arbitrated may be separated into two broad categories. The first category includes technical issues while the second issue includes some, but not all of the pricing issues related to line-sharing. Not all pricing issues are addressed in this docket because Ameritech has recently filed, and the Commission suspended, a line-sharing tariff. The parties agreed that it was administratively more efficient to address the bulk of the pricing issues in the docket addressing the tariff rather than in this arbitration.

### **A. TECHNICAL ISSUES**

Issue 1: Whether Ameritech Illinois should be required to provide a menu of three splitter network configurations to address CLECs' differing business needs in all requesting central offices. Issue 1 raises two distinct questions: first,

whether Ameritech Illinois is required to provide splitters to CLECS; and, second, where splitters should be located in the Ameritech Illinois central office.

A. SBC Ameritech Position

1. **Splitter Ownership**

SBC Ameritech claims that, pursuant to the FCC's *Line Sharing Order*, it is not required to own splitters or provide splitter functionality to CLECs. Rather, SBC Ameritech maintains that the FCC gave ILECs the option either to provide splitters or allow CLECs to purchase and install splitters themselves. In support of its interpretation, SBC Ameritech cites Paragraph 76 and 146 of the FCC's *Line Sharing Order* and the FCC's recent order granting Southwestern Bell Telephone Company (SWBT) 271 approval. In addition, Ameritech claims that its interpretation is consistent with line sharing the arbitration awards in Texas, California, and Pennsylvania. Ameritech has, however, proposed two splitter scenarios, one in which it purchases and installs the splitter and one in which the requesting carrier purchases and installs the splitter.

SBC Ameritech further claims that it cannot be obligated to provide splitter functionality to CLECs because it can only be required to unbundle components of its existing network. In particular, SBC Ameritech argues that, as splitters are not elements of its current existing network and have not been specifically identified by the FCC as a UNE, it should be obligated to unbundle them. Moreover, SBC Ameritech claims that splitters would not meet the "necessary" and "impair" standard of Section 251(d) of the Act because Covad and Rhythms can purchase and install splitters themselves. Accordingly, Ameritech maintains that it has no obligation to provide CLECs with splitter functionality and thus its current offering is entirely voluntary.

2. **Splitter Location**

SBC Ameritech claims that this Commission cannot dictate the particular areas within its central offices where CLECs can collocate their equipment. SBC Ameritech asserts that its position has been reaffirmed by the D.C. Circuit's opinion in GTE, which SBC Ameritech claims bars a CLEC from mandating that its equipment be collocated in any unused space in SBC Ameritech's central offices. Accordingly, SBC Ameritech argues that it must be permitted to control where it places Ameritech owned splitters, as well as where CLECs collocate their equipment, because it must be allowed to manage the use of its own central office floor and frame space to ensure that it is used in an efficient and safe manner.

Consistent with its interpretation of current law, SBC Ameritech proposes that when the CLEC owns the splitter, the CLEC may install its splitter in its physical collocation area (whether caged or cageless) consistent with its physical collocation tariff. If the CLEC is virtually collocated in a central office, SBC Ameritech states that it will install, provision, and maintain the CLEC's splitters under the terms of its virtual collocation tariff. If SBC Ameritech owns the splitter, it will determine whether it will locate the splitters within in the central office.

SBC Ameritech maintains that its proposal of placing ILEC owned splitters in a common area, as opposed to mounting them on the Main Distribution Frame ("MDF") should be adopted as reasonable. First, SBC Ameritech states that it must place splitters in a common area "because [] test access would not be available if splitters are placed on the MDF." (Ameritech Illinois Ex. 1.0 (Schlackman) at 30.) Second, SBC Ameritech claims that placing the splitter reduces the amount of available space on the MDF. (Ameritech Illinois Ex. 1.0 (Schlackman) at 28-29.) Third, SBC Ameritech argues that placing on the splitter on the MDF would require SBC Ameritech to engineer its central offices to satisfy the needs of DSL services without taking into consideration the needs of the ILEC or the other carriers.

Ameritech Illinois also argues that the record shows that, as a matter of sound central office engineering practice, equipment such as a splitter is not installed on the MDF. (Tr. 72). Rather, the MDF is designed for wiring. Moreover, Ameritech Illinois argues, the record shows that placing splitters on the main distribution frame could lead to faster exhaust of the frame. Staff Ex. 1.0 at 7 (Graves); (Tr. 73). Ameritech Illinois points out that the frame-mounted splitters that Rhythms and Covad claim are "more efficient" can only provision a maximum of 16 lines. More importantly, these splitters are larger than a 100 pair connecting block that Ameritech Illinois mounts on frames. Ameritech Illinois states that, if Ameritech Illinois were to mount splitters on the MDF so that CLECs could avoid paying for tie cabling, Ameritech Illinois would consume twice the frame space. Ameritech Illinois Ex. 1.0 at 28-29 (Schlackman). Ameritech Illinois further argues that Rhythms and Covad's efficiency argument is flawed because it looks at efficiency solely from the narrow economic prospective of Rhythms and Covad. Ameritech Illinois asserts it should not be required to engineer its central offices to optimize the economics for just one particular service or one particular CLEC; rather, it must take into account all of the different services and the needs of all carriers provided or served out of that central office, including itself.

## **B. Covad/Rhythms Position**

Covad and Rhythms assert that SBC Ameritech must be required to provide a menu of three splitter configurations: (1) an ILEC owned splitter

located on the MDF; (2) an ILEC or CLEC owned splitter located as close to the DS0 terminations or the MDF as possible; and (3) a CLEC owned splitter in the CLEC's physical collocation arrangement. Covad and Rhythms note that SBC Ameritech allows for Option #3 and provides for CLEC owned splitters in a "common area," which, they note, is frequently not near either the DS0 terminations or the frame.

## 1. Splitter Ownership

Covad and Rhythms state that FCC's *Line Sharing Order* expressly requires SBC Ameritech to provide splitter functionality to requesting CLECs:

In situations where a requesting carrier is obtaining access to the high frequency portion of the loop the incumbent LEC...*shall provide to requesting carriers loop and splitter functionality* that is compatible with any transmission technology that the requesting carrier seeks to deploy using the high frequency portion of the loop.

In particular, Covad and Rhythms observe that the FCC recognized the distinction between an ILEC's right to maintain control over the splitter after its installation, and an ILEC's obligation to provide the splitter functionality required to access the line sharing UNE. Thus, although SBC Ameritech may decline to "maintain control" over the splitter, it still must provide splitter functionality to CLECs.

Moreover, Covad and Rhythms assert that SBC Ameritech must own the splitter and provide splitter functionality to CLECs because the Act and the FCC's rules require ILECs to provide not only UNEs, but also access to UNEs. They note that under § 251(c)(3) of the Act, incumbent local exchange carriers have the duty to provide "unbundled access" to UNEs—*i.e.*, "[t]he duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point."

The FCC defined the meaning of "access" in the First Local Competition Report and Order, stating:

We conclude that the obligation to provide "nondiscriminatory access to network elements on an unbundled basis" refers to *both the physical or logical connection to the element and the element itself*.

We further conclude that "access" to an unbundled element refers to *the means by which requesting carriers obtain an element's functionality* in order to provide a telecommunications service. . . . We conclude . . . that an incumbent

LEC's duty to provide 'access' constitutes a duty to provide a connection to a network element independent of any duty imposed by subsection 251(c)(2). Thus, such "access" must be provided under the rates, terms and conditions that apply to unbundled elements. *First Local Competition Report and Order*, ¶ 312 (quoting 47 U.S.C. § 251(c)(3)) & 269).

Covad and Rhythms further assert that SBC Ameritech must also provide an ILEC owned splitter because it is technically feasible to do so. In support of their position, Covad and Rhythms cite FCC regulations that state that, "an incumbent LEC shall provide...*any technically feasible method* of obtaining interconnection or access to unbundled network elements at a particular point upon a request by a telecommunications carrier." 47 C.F.R. § 51.321(a).

Under the FCC's "best practices" rules regarding access to UNEs, [a] previously successful method of obtaining interconnection or access to unbundled network elements at a particular premises or point on an incumbents LEC's network *is substantial evidence that such method is technically feasible* in the case of substantially similar network premises or points.

If an incumbent LEC denies a requested method of obtaining access to a UNE, that incumbent LEC "must prove to the state commission that the requested method of obtaining interconnection or access to unbundled network elements at that point is not technically feasible." *Id.* § 51.321(d). Covad and Rhythms assert that SBC Ameritech has failed to meet its burden of proving that the ILEC-owned splitter method is not technically feasible and, in fact, has *admitted* generally and in this proceeding that the ILEC-owned splitter method is technically feasible.

Covad and Rhythms also maintain that, by allowing a CLEC to collocate its own splitter, the FCC intended only to provide CLECs with an additional splitter configuration. The FCC's mere suggestion of another option to CLECs cannot reasonably be construed as an abrogation of the express language of the FCC's rules—*i.e.*, that ILECs "*shall* provide loop and splitter functionality." 47 C.F.R. § 51.319(h)(4).

Covad and Rhythms also disagree with SBC Ameritech's claim that the FCC, in its recent order granting SWBT 271 authority, confirmed that an ILEC has no obligation to provide CLECs with splitter functionality. Covad and Rhythms contend that SBC Ameritech improperly relies on language in the 271 Order relating to *line splitting*, not *line sharing*. As the FCC carefully noted, line sharing is limited to "those instances in which the incumbent LEC is providing, and continues to provide, voice service on the particular loop to which the requesting carrier seeks access." SWBT Order ¶ 324. In contrast, "line splitting"

occurs when "the voice and data service will be provided by competing carrier(s) over a single loop," rather than the ILEC. *Id.*

Covad and Rhythms assert that the FCC addressed only line splitting in the Texas 271 Order and thus rejected "AT&T's argument that SWBT has a present obligation [under the UNE Remand Order] to furnish the splitter when AT&T engages in line splitting over the UNE-[Platform]." SWBT 271 Order ¶¶ 327, 328. The FCC did not address any ILEC obligations arising from the Line Sharing Order and in fact did not even examine SWBT's compliance with the Line Sharing Order in addressing SWBT's 271 application. SWBT 271 Order ¶ 321. Covad and Rhythms conclude, therefore, that the FCC's Texas 271 Order has no bearing on the line sharing terms and conditions at issue in this arbitration.

## **2. Splitter Location**

Covad and Rhythms maintain that SBC Ameritech must provide efficient network configurations and therefore must offer CLECs two additional splitter configurations: (1) an ILEC owned splitter located at the MDF; and (2) an ILEC or CLEC owned splitter located as near the DS0 terminations as possible or on the distribution frame if possible.

Covad and Rhythms contend that SBC-Ameritech's proposed configuration when it owns the splitter is inferior to the ILEC-owned configuration proposed by Covad because it (1) increases cost by requiring more cross-connects and tie-cables than necessary, (2) increases risk of service failure by requiring more cross-connects and tie-cables than necessary, and (3) limits the availability of DSL services to CLEC customers in violation of the nondiscrimination provisions of the Act.

Covad and Rhythms assert that the most efficient network configuration for line sharing in which an ILEC owns the splitter involves the placement of the splitter directly on the horizontal side of the Main Distribution Frame ("MDF") as depicted in Ex. 2.4 (Figure 3) attached to the Verified Statement of Joseph Riolo. As Mr. Riolo testified and as acknowledged by SBC Ameritech witness James Smallwood, this configuration requires the placement of only two jumpers or cross-connects, and would reduce the number of tie-cables to one. (Covad/Rhythms Ex. 2.0, Riolo at 14; Hearing Tr. (Smallwood) 359:22, 260: 1-22). Covad and Rhythms state that SBC Ameritech's proposed ILEC-owned splitter configuration, however, does not place the splitter on the MDF, but instead places it in a "common place" and builds out cabling to the intermediate distribution frame ("IDF"). (Ameritech Illinois Ex. 1.0 (Schlackman) at 27-28). Covad and Rhythms note that, according to SBC Ameritech's diagram and the testimony of Mr. Smallwood, this configuration requires the placement of five (5)

cross connects and four (4) tie-cables. (Ameritech Illinois Ex. 1.0, Attachment 2 and Hearing Tr. (Smallwood) 358:1-22. Thus, Covad and Rhythms contend that, by using an inefficient configuration, SBC Ameritech is imposing unnecessary costs associated with three extra cross-connects and three extra tie-cables.

Moreover, by increasing the number of cross-connect and tie cables necessary to provision line sharing, Covad and Rhythms assert that SBC Ameritech necessarily increases the likelihood of failure for CLEC customers. Covad and Rhythms maintain that the increased risk of service failure in SBC Ameritech's proposed configuration not only reflects poor engineering, it also violates the 47 U.S.C. § 251(c)(3) which requires ILECs provide access to UNEs in a nondiscriminatory manner. As SBC Ameritech acknowledged, SBC Ameritech's affiliate, Advanced Data Services ("AADS") uses an integrated splitter functionality that does not require excessive tie-cables and cross-connects, thereby reducing the likelihood of service failure. Covad and Rhythms contend that, by insisting upon a CLEC architecture that requires more points of potential failure than necessary, SBC Ameritech discriminates against CLECs and their customers.

Finally, Covad and Rhythms assert that SBC Ameritech's ILEC-owned splitter configuration favors its own integrated splitter Digital Subscriber Line Access Multiplexer ("DSLAM") equipment and discriminates against CLEC's DSLAM equipment. In particular, Covad and Rhythms state that SBC Ameritech's proposed ILEC-owned splitter configuration increases the length of cable that carries the DSL signal from the customer premises to a CLEC's DSLAM, essentially creating a Z-effect as acknowledged by SBC Ameritech. (Hearing Tr. (Schlackman) at 850: 10-16; 853: 19-22; 854: 1-2) Covad and Rhythms assert that effect would reduce the availability of CLEC DSL services because DSL is a distance sensitive technology. For example, if the Z effect within a multi-storied building added 500 to 1,000 feet to the overall length of cable, it could effectively prohibit Covad or Rhythms from providing service to some customers served from that particular central office. Covad and Rhythms maintain that AADS, in contrast, would not experience the same distance limitation because of its use of a virtually collocated DSLAM with an integrated splitter.

Covad and Rhythms also dispute that use of Covad's proposed ILEC-owned splitter configuration will result in frame exhaust for three reasons. First, Covad and Rhythms claim that SBC Ameritech has not provided any evidence that in this proceeding that frame space is even approaching present capacity. Second, Covad and Rhythms maintain that the risk of future frame exhaust is unlikely because SBC's Project Pronto architecture uses integrated DLC technology that bypasses the MDF altogether, the risk of future frame exhaust is unlikely at best. Finally, Covad and Rhythms contend that newer MDF-mounted



splitter technologies are decreasing frame presence and increasing line capacity, making future frame exhaust even more unlikely.

Covad and Rhythms also seek a splitter configuration arrangement (Option #2) under which a CLEC may own its own splitter or have the ILEC provide the splitter with the splitter residing in the "common area" (i.e. the ILEC-controlled area to which the CLEC has access for testing purposes). Covad and US West presently use the above configuration for splitter collocation. As a result, Covad and Rhythms assert that the FCC's Advanced Services Order requires SBC Ameritech to implement this "best practice" and provide the same splitter collocation configuration.

### **C. Staff Position**

With respect to the ownership of the splitter, Staff agrees with Ameritech Illinois' interpretation of the *Line Sharing Order*, (Tr. 62), arguing that the Order does not require Ameritech Illinois to own splitters. Staff argues that CLECs who are interested in line sharing have the option to obtain access to the HFPL UNE using their own splitters, as opposed to using splitters that Ameritech Illinois might voluntarily provide. (Tr. 67). Staff asserts that CLECs have the same opportunity to purchase splitters as any ILEC.

With respect to the second issue (location of the splitter), Staff argues that it is generally preferable to locate the splitter as close to the MDF as possible, in order for the DSL service to have the greatest range possible. Nevertheless, Staff agrees with Ameritech Illinois' assertion that CLECs have no right to decide where their equipment will be placed in an ILEC's central office (Tr. 47-48); and also asserts that the Commission cannot mandate where Ameritech Illinois locates its splitter equipment.

In further support of its position that splitters should not be located on the MDF, Staff also points out that the *Line Sharing Order* requires Ameritech Illinois to provide the CLECs with test access to the splitter. Staff argues that, because CLECs cannot have access to an ILEC's MDF, the only way CLECs can obtain such test access to ILEC-owned splitters is if Ameritech Illinois places its splitters in common areas accessible to CLECs. (Tr. 110-11).

Staff adds that at this stage of the roll-out of Ameritech Illinois' HFPL product, it is questionable whether locations of splitters could be changed without major upheaval. Staff agrees with Ameritech Illinois that Ameritech Illinois should not be required to engineer its central offices to optimize the economics for just one particular service or one particular CLEC; rather, as a matter of sound planning and engineering, an ILEC should take into account all of the different services and the needs of all carriers provided or served out of

that central office, including the ILEC itself. (Tr. 79). Staff witness Mr. Graves stated, "there are several issues to weigh as far as what the efficient network is as far as what's currently available and what's in place." (Tr. 54). Staff further testified that it would not be reasonable to design a central office that would ignore the needs of services and products other than line sharing. (Tr. 127). Staff witness Mr. Koch stated, "I believe that the company needs to take into consideration all services that are provided out of the central office as well as requirements from the Federal government or the Illinois Commission in the provisioning of services." (Tr. 127-28).

#### **D. Commission Analysis and Conclusion**

With respect to the first issue (ownership of the splitter), the Commission finds that the *Line Sharing Order* does not require Ameritech Illinois to provide splitters. As Ameritech Illinois pointed out, the FCC stated in Paragraph 76 of the *Line Sharing Order*:

We conclude that, subject to certain obligations, incumbent LECs *may* maintain control over the loop and splitter equipment and functions. In fact, both the incumbents and the competitive LECs agree that subject to certain obligations, the incumbent LEC *may* maintain control over the loop and the splitter functionality *if desired*. (Emphasis supplied.)

Additionally, the FCC ruled in Paragraph 146 that

We conclude that incumbent LECs must either provide splitters or allow competitive LECs to purchase comparable splitters as part of this new unbundled network element. (Emphasis supplied).

These paragraphs clearly indicate that Ameritech Illinois is under no legal obligation to make available Ameritech Illinois-owned splitters; rather, Ameritech Illinois has the option to own splitters. The FCC recently confirmed this interpretation in the *Texas Approval Order*. Specifically, in the course of discussing an AT&T-proposed modification to the FCC's line sharing requirements, referred to as "line-splitting", the FCC, in rejecting AT&T's position, reconfirmed that "[w]ith respect to line sharing, we stated in the *Line Sharing Order* that incumbent LECs have discretion to maintain control over the splitter." *Texas Approval Order* ¶ 328 (emphasis added). While it is true, as noted by Rhythms and Covad, that the narrow issue before the Commission in the *Texas Order* was line splitting and not line sharing, a fair reading of the text convinces us that the Commission was addressing the issue of ownership of splitters by ILECs generally and not in the limited manner suggested by the CLECs.

This interpretation also has been adopted by arbitrators in Texas, California and Pennsylvania. Indeed, the *Texas Interim Award* states, "Arbitrators believe that the most reasonable interpretation of the *Line Sharing Order*. . . is that the ILECs can either provide CLECs with the splitter equipment or allow CLECs to use their own splitter equipment." The *California Final Arbitrator's Report* states, "The FCC allows, but does not require, ILECs to own splitters. . . That is, ILEC control is discretionary, not mandatory." Similarly, the *Pennsylvania Recommended Decision* concludes, "I agree with BA-PA that it should not have to bear the financial risk and burden of owning the splitter."

Even if the *Line Sharing Order* was unclear, we could not require Ameritech Illinois to provide the splitter functionality. As pointed out by Ameritech Illinois, it is only required to unbundled components of its existing network and splitters are not elements of Ameritech Illinois' existing network. Moreover, the splitter does not meet the "necessary" and "impair" standard of Section 251(d). Section 251(d) identifies the criteria that must be satisfied before an ILEC is required to make unbundled network elements ("UNEs") available to CLECs. It states:

In determining what network elements should be made available for purposes of subsection (c)(3) of this Section, the [FCC] shall consider, at a minimum, whether:

- (A) access to such network elements as are proprietary in nature is necessary; and
- (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.

The United States Supreme Court has held that this necessary and impair standard requires the [FCC] to determine on a rational basis *which* network elements must be made available, taking into account the objective of the Act and giving some substance to the "necessary" and "impair" requirements. The latter is not achieved by disregarding entirely the availability of elements outside the network, and by regarding any "increased cost or decreased service quality" as establishing a "necessity" and an "impair[ment]" of the ability to "provide . . . services."

Because Rhythms and Covad admittedly can purchase splitters themselves from the same vendors as Ameritech Illinois just as readily as Ameritech Illinois (Ameritech Illinois Ex. 1.0 at 9-10 (Schlackman); Tr. 642), the splitter does not meet the "necessary" and "impair" standard. As Ameritech Illinois points out, Rhythms' business plan is to own, control, install and maintain

its own splitters, and Rhythms has requested ILEC-owned splitters only in a very small percentage of Ameritech Illinois' central offices.

We disagree with Covad's claim that an Ameritech Illinois-owned splitter is necessary for it to obtain access to the high frequency portion of the loop. Indeed, Covad does not need Ameritech Illinois-owned splitters in order to gain access to the HFPL; rather, Covad can gain access to the HFPL by purchasing and installing its own splitter. The FCC agrees with this position and, in fact, that is what Rhythms has chosen to do for most central offices. (Tr. 67). As such, an ILEC-provided splitter is not necessary to access the HFPL and, hence, it is not part of the HFPL UNE.

With respect to the second issue (where the splitter should be located), the Commission finds that Rhythms and Covad cannot dictate where splitters are located in an Ameritech Illinois central office. The D.C. Circuit's decision is controlling here. It held, in vacating several of the FCC's collocation rules,

It is one thing to say that LECs are forbidden from imposing unreasonable minimum space requirements on competitors; it is quite another thing, however, to say that competitors, over the objection of LEC property owners, are free to pick and choose preferred space on the LECs' premises, subject to only technical feasibility. There is nothing in § 251(c)(6) that endorses this approach.

GTE Services Corporation et al. v. Federal Communications Commission et al., 205 F. 3d 416, 426 (D.C. Cir. 2000) (emphasis added). We also agree with Ameritech Illinois that it must be allowed to manage the use of its central office floor and frame space. The *California Final Arbitrator's Report* reached the same conclusion, stating at page 20, "The CL[E]C . . . may not dictate the location of the splitter owned by the ILEC."

The Commission rejects Rhythms and Covad's argument that the *Line Sharing Order* recommends locating splitters on the MDF. There is absolutely no support for this contention, as paragraph 113 of the *Line Sharing Order* specifically contemplates that splitters will be located *between* the MDF and the other central office equipment.

We also reject Rhythms and Covad's argument that it is more efficient to locate splitters on the MDF. As pointed out by Ameritech Illinois, placing splitters on the MDF is only efficient from the narrow economic perspective of Rhythms and Covad and their provision of a single service, xDSL service. Indeed, Rhythms and Covad desire such a configuration so that they do not have to pay for tie cabling. Ameritech Illinois, however, should not be required to engineer its central office to optimize the economics for just one particular service or provider. Moreover, the testimony in this case indicates that equipment such as

splitters are not installed on MDFs; rather, the MDF is designed for wiring. In addition, frame mounted splitters will take up twice as much frame space as compared to if the splitter were located in the collocation area. Additionally, if splitters are mounted on the MDF, Rhythms and Covad will not have the test access to the splitter. The Commission also is not persuaded by Rhythms and Covad's argument that locating splitters in the collocation area will reduce the amount of available collocation space. Again, this amounts to reconfiguring Ameritech Illinois' network to optimize the economics solely for Rhythms and Covad, to the exclusion of the needs of all other competitors and Ameritech Illinois.

In sum, Rhythms' and Covad's arguments merely request this Commission to favor their needs over the needs of all other CLECs and of Ameritech Illinois to have sufficient space on the MDF. Rhythms' and Covad's "mandatory menu" approach is contrary to law and, in terms of regulatory policy, unreasonable because it addresses line sharing from the narrow business prospective of Rhythms and Covad's own economic interests. Neither Ameritech Illinois nor this Commission has an obligation to ensure the success of Rhythms' and Covad's individual business plans (or any individual carrier's business plans), and it would be unlawful to impose such an obligation on Ameritech Illinois. As the *California Final Arbitrator's Report* found, "While a menu of choices may be optimal from the point of view of CLECs, it is neither required by the FCC nor is it reasonable." *Id.* at 19. This Commission agrees. Accordingly, Ameritech Illinois' contract language is adopted.

**Issue 2: If Ameritech Illinois owns the splitter, should it provide splitter functionality to CLECs on a line-at-a-time and/or shelf-at-a-time basis?**

**A. Ameritech Position**

As threshold matter, SBC Ameritech argues that, because it cannot be required to provide splitter functionality at all, it certainly cannot be required to provide splitters on a shelf-at-a-time basis.

Even if it were required to provide splitter functionality to CLECs, SBC Ameritech presents four additional arguments as to why it cannot be required to provide splitter functionality on a shelf-at-a time basis. First, SBC Ameritech maintains that its OSS inventory system cannot provision line sharing on a line-at-a-time basis as well as on a shelf-at-a-time basis. In particular, SBC Ameritech states that its OSS system has been upgraded specifically to inventory each SBC Ameritech owned splitter on a line at a time basis. As a result, SBC Ameritech claims that it would require "massive re-engineering" to provide splitter functionality on a shelf at a time basis. (Ameritech Illinois Ex. 1.0 (Schlackman) at 15-16) Moreover, SBC Ameritech asserts that, even if it desired

to provide splitter functionality on a shelf at a time basis, it could not do so in the foreseeable future because Telcordia Technologies -- the creator of SBC Ameritech's inventory system -- could not begin modifications until after November 2000. In addition to the uncertainties related to timeframe, SBC Ameritech asserts that the costs of the modifications to allow for shelf-at-a-time are similarly unknown.

Second, SBC Ameritech argues that "shelf-at-a-time" will lead to frame exhaust. In particular, SBC Ameritech claims that, while the shelf at a time decreases the number of cross connects, it increases the number of blocks on the frame. (Ameritech Illinois Ex. 1.0 at 17).

Third, SBC Ameritech claims that providing splitter functionality on a shelf at a time basis results in an inefficient use of capital for SBC Ameritech. SBC Ameritech maintains that provisioning splitters on a shelf-at-time basis could result in underutilization of splitter capacity and leading to stranded investment by Ameritech Illinois. SBC Ameritech also asserts that Covad and Rhythms desire for shelf-at-a-time is anticompetitive as it allows a CLEC to reserve an entire shelf for its own use. (Ameritech Br. at 15).

Finally, SBC Ameritech states that no other ILEC has agreed to provide splitter functionality to Rhythms and Covad on both line-at-a-time and shelf-at-a-time basis.

#### **B. Covad/Rhythms Position**

Covad and Rhythms contend that SBC Ameritech must provide CLECs with splitter functionality on a bulk basis because it is technically feasible to do so. Covad and Rhythms again note that the FCC's "best practices" rules regarding access to UNEs provide that a previously successful method of obtaining interconnection or access to unbundled network *is substantial evidence that such method is technically feasible.* 47 C.F.R. § 51.321(a). Covad and Rhythms further emphasize an ILEC may not deny a requested method of obtaining access to a UNE unless it proves to the state commission, by *clear and convincing* evidence, that the requested method is not technically feasible. 47 C.F.R. § 51.5, 51.321(d). Covad and Rhythms maintain that SBC Ameritech has not met its burden in this case because a determination of technical feasibility "does not include consideration of economic, accounting, billing, space, or site concerns." The fact that an incumbent LEC must modify its facilities or equipment to respond to such a request does not determine whether satisfying such a request is technically feasible." 47 C.F.R. § 51.5.

Covad and Rhythms note, as stated in the testimony of Michael Zulevic, BellSouth provides splitter functionality to Covad on a bulk basis. As outlined in

Covad and Rhythms Post Hearing Brief, SBC Ameritech, however, has not provided any convincing evidence that the BellSouth method is technically infeasible in Illinois. For example, although Ms. Schlackman claims that SBC Ameritech's software systems "are not capable of supporting" the assignment of splitter functionality in shelves, Ms. Schlackman admitted during the evidentiary hearing that never asked Telcordia whether such a system could be created. (Ameritech Illinois Ex. 1.0, Schlackman at 14; Hearing Tr. (Schlackman) 873:19-22, 874:1-2). Covad and Rhythms note that, contrary to SBC Ameritech's assertions, nowhere in the Telcordia OSS document detailing "Line Sharing Solution" for SBC does Telcordia state its OSS solution will only provision splitters a port at a time.

Moreover, Covad and Rhythms contend that, because the AADS configuration and virtual collocation of CLEC-owned splitters would require SBC Ameritech to assign the entire splitter shelf to AADS or a CLEC, it is indefensible for SBC Ameritech to contend that its OSS system will not allow the provisioning of splitter functionality in shelf increments.

Covad and Rhythms also dismiss as suspect SBC Ameritech's claim of frame exhaust if it must provide splitter functionality in shelf increments. Covad and Rhythms disagree with SBC Ameritech's contention that the overall number of cables and blocks on the frame increases when splitter functionality is provided in shelf increments as opposed to line increments. Covad and Rhythms observe that the amount of frame space required to serve those customers is identical regardless of whether SBC Ameritech sells the CLEC 192 ports at one time or one port 192 times. Covad and Rhythms further observe that, given the overwhelming demand of line-shared DSL services, the likelihood that CLEC shelf space will remain unused for any significant amount of time is virtually nonexistent. Finally, Covad and Rhythms contend that SBC Ameritech can avoid any stranded investment in the splitter by passing the cost of the splitter to the CLEC.

Covad and Rhythms also cited several benefits resulting from "shelf-at-a-time" provisioning. First, providing splitter functionality in shelf increments, as BellSouth does, allows a CLEC to manage its own capacity to meet demand. As Mr. Zulevic testified, by purchasing splitter functionality in shelf increments, a CLEC can prepare to meet expected consumer demand before customer orders are placed. If, however, CLECs are required to order splitter functionality in line increments only, a CLEC cannot obtain splitter functionality from the ILEC until an end-user places an order with the CLEC. If the ILEC has not managed capacity correctly, the CLEC customer's order will be delayed while the ILEC installs the necessary splitter capacity. Second, Covad and Rhythms assert that providing splitter functionality in shelf increments reduces both the risk of ILEC provisioning errors and time required to provision a line-shared circuit because

the splitter can be pre-wired. As stated in the Mr. Zulevic's testimony, the pre-wiring of the splitter eliminates a connection that the ILEC central office technician must make when installing a line-shared circuit and thus requires less time and reduces the number of jumpers that ILEC technician could misconnect. (Covad Ex. 2.0, Zulevic at 14-15).

### **C. Staff Position**

Staff recommends that the Commission order Ameritech to provide splitter functionality on both a line-at-a time and a shelf-at-a time basis. In reaching that conclusion, Staff weighed both the benefits and inefficiencies of provisioning splitter functionality on a shelf at a time basis. In particular, Staff notes that providing splitter functionality on a shelf at a time basis increases the amount of available efficient space in which CLECs may collocate, permits CLECs to plan and manage their own capacity and allows CLECs to hardwire the splitter to the DSLAM – reducing the connections needed to the frame and reducing provisioning errors. In assessing the potential inefficiencies, Staff finds Ameritech's claims that its OSS systems could not inventory a shelf at a time for line sharing confusing and unsubstantiated. Staff recognizes, however, that shelf-at-a time resulted in a few inefficiencies, notably manual intervention in the provisioning process, but finds that the benefits outweighed the potential inefficiencies.

### **D. Commission Analysis and Conclusion**

The Commission concludes that SBC Ameritech must provide splitter functionality on both a shelf-at-a-time basis, in addition to the line-at-a-time basis it already offers. We find irrelevant Ameritech's argument that, because it is under no duty to provide splitter functionality (as found above), the issue of the manner in which that functionality is to be provisioned on a voluntary basis is not subject to arbitration. The fact is that Ameritech has agreed to provide splitters that it owns. Once this was done, the manner of provisioning becomes germane.

The Commission finds unpersuasive SBC Ameritech's arguments that its OSS system cannot inventory splitter functionality on a shelf-at-a-time basis because technical feasibility does not include considerations of economic, accounting, billing, space, or space concerns, SBC Ameritech claims that it cannot provide shelf-at-a-time because Telcordia allegedly cannot turn to the project until November 2000 and has not provided a price quote for the "upgrade" are entirely unavailing. Indeed, we note that SBC Ameritech neither bothered to ask whether a system that supports assignment of splitter functionality in shelves can be created nor has it asked if its current systems could be modified to allow for such an assignment system. Thus, this



Commission places no weight on SBC Ameritech's claims that its OSS systems cannot assign splitter functionality in shelf increments.

The Commission does find some merit in SBC Ameritech's argument that provisioning splitter functionality on a shelf at a time could allow CLECs to act in an anticompetitive manner. SBC Ameritech claims that allowing a CLEC to reserve an entire shelf for its own use may effectively bar other CLECs from providing DSL service. As Staff recognized, SBC Ameritech's hypothetical would only occur if absolutely no additional splitters were available for purchase and installation and no additional capacity were available in a central office. In the first place it is somewhat difficult to imagine that such a chain of events would occur. Nonetheless, to further assure against such an occurrence, the Commission will allow Ameritech, upon the provisioning of splitter functionality on a shelf at a time basis, to also begin charging the requesting carrier for all loops, jumpers, cross connects and other hardware as if the entire splitter shelf were being utilized to provide xDSL service. This should encourage Rhythms and Covad to only order splitter functionality on a shelf at a time basis when the demand warrants such an order, while providing them with the economies and efficiencies of their preferred provisioning option.

**Issue 3: Whether thirty (30) calendar days is the appropriate interval for augments to provide line sharing?**

**A. Ameritech Illinois Position**

Ameritech Illinois argues that Rhythm's and Covad's proposal that collocation augments be provided within 30 days of a request should be rejected. First, Ameritech Illinois argues that collocation terms and conditions are beyond the scope of this line sharing arbitration proceeding. Ameritech Illinois explains that collocation is not line sharing, and collocation issues should not be brought into this proceeding; rather, the rates, terms and conditions which apply to collocation today should also apply in the line sharing environment. Ameritech Illinois also points out that the 30 day interval proposed by Rhythms and Covad is substantially shorter than that set forth in Ameritech Illinois' Commission-approved collocation tariff and Commission-approved interconnection agreements. Ameritech Illinois argues that Rhythms and Covad provide no justification why the Commission-approved collocation intervals and processes in these tariffs and interconnection agreements should be circumvented just for line sharing, thereby giving Rhythms and Covad preferential treatment. Ameritech Illinois Ex. 1.0 at 31-32 (Schlackman).

Ameritech Illinois points out that it has already agreed to a 30 day collocation augment interval in those instances where a CLEC wishes to reuse existing cabling and dedicate that cabling for line sharing. Ameritech Illinois

explains that upon receipt of a complete and correct collocation application, Ameritech Illinois has agreed to redesignate a CLEC's existing cabling in Ameritech Illinois' databases and complete provisioning of the collocation application within 30 days of its receipt. Ameritech Illinois also has agreed to waive the normal collocation application fees in these instances. Ameritech Illinois Ex. 1.0 at 32 (Schlackman). Ameritech Illinois' asserts that its proposed contract language on this issue is reasonable, and the Commission should adopt it.

**B. Rhythms/Covad Position**

Rhythms and Covad propose that Ameritech Illinois be required to provide collocation augments for line sharing within 30 days from when Rhythms and Covad submit requests for such augments. Rhythms and Covad assert that the installation of tie cables and inventory of these facilities in Ameritech Illinois' OSS are simple tasks that Ameritech Illinois already performs. Rhythms and Covad further assert that, because the FCC's order requires line sharing to be available by a date certain, Ameritech Illinois should be planning to install a large number of tie cables and splitters and making other related changes in its central offices that are necessary for line sharing on an expedited basis and in bulk. These activities, Rhythms and Covad argue, can be done efficiently and quickly at any particular serving wire center, making the 30 day installation interval achievable. In support of their position, Rhythms and Covad also assert that Southwestern Bell Telephone Company agreed to provide Rhythms and Covad with installation of entire collocation arrangements in thirty days, and further stated that entire collocation arrangements are more complex than tie cable and line sharing equipment installations.

**C. Staff Position**

Staff did not specifically address Issue 3 in its testimony.

**D. Commission Analysis and Conclusion**

The Commission rejects Rhythms and Covad's request that collocation augments be provided within 30 days of a request. Collocation terms and conditions are not a part of this line sharing arbitration; rather, collocation terms are set forth in Ameritech Illinois collocation tariff and interconnection agreements that have been approved by this Commission. Moreover, Rhythms and Covad's 30 day interval is substantially shorter than the collocation intervals this Commission has approved in the past and there is no reason for this Commission to require Ameritech Illinois to provide Rhythms and Covad with favored treatment over other telecommunications service providers by imposing a shorter interval than those we previously approved.